

# TUGGLE DUGGINS

ATTORNEYS AT LAW

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August 1, 2014

**Via FedEx**

NC Division of Waste Management  
Attn: David Peacock  
Brownfields Program  
1646 Mail Service Center  
Raleigh, NC 27699-1646



**Re:   *Annual Land Use Restrictions Update  
Guilford Mills – Hornaday, #10028-06-41  
5644 Hornaday Road, Guilford County***

Dear David:

Enclosed please find the Land Use Restrictions Update for Hornaday Acquisitions, LLC.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

  
Sally King  
Legal Assistant

/skk  
Enclosure

755922v1

Tuggle Duggins P.A.  
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**Brownfields Project #:** 10028-06-41

**Brownfields Property:** Guilford Mills – Hornaday, 5644 Hornaday Road

**Property Owner (In whole or part):** Hornaday Acquisitions, LLC



**LAND USE RESTRICTIONS ("LUR") UPDATE**

LUR 1: No use may be made of the Brownfields Property other than for light manufacturing (and with prior written Department of Environment and Natural Resources {"DENR"} approval other light industrial uses), warehousing and mixed retail/office use, all in compliance with the other land use restrictions. For purposes of this restriction, the following definitions apply:

- a. Light Manufacturing: The assembly, fabrication, or processing of goods and materials using processes that do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by the outdoor storage of goods and material used in such processes does not exceed 25 percent of the floor area of all the buildings on the property. Light manufacturing involves the generation of no process water or wastewater.
- b. Warehousing: The storage of goods for a business or other enterprise.
- c. Retail: The sale of goods, products or merchandise directly to the consumer.
- d. Office: The rendering of business or professional services.

In compliance  X  Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
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LUR 2: Any demolition of structures depicted on the plat component of the Notice of Brownfields Property ("Notice") shall be conducted in accordance with applicable legal requirements, including without limitation those administered by the Lead and Asbestos Abatement Program of DENR's Division of Public Health.

In compliance  X  Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_

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LUR 3: No building may be constructed on the Brownfields Property until DENR has been consulted regarding the proximity of the planned building to the Brownfields Property's volatile contaminant plume. If DENR determines that the footprint of a building proposed to be constructed on the Brownfields Property would fall within one hundred (100) feet of said plume, it may not be constructed without a vapor barrier system and/or mechanical or passive vapor barrier mitigation system, or other effective vapor mitigation system approved by DENR. Within thirty 30 days following installation of the vapor barrier system and/or mechanical or passive vapor barrier mitigation system, DENR shall be provided certification of proper installation under seal of a professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it. With DENR's prior written approval, additional investigation activities including, without limitation, soil gas samples, performed to DENR's written satisfaction, may be conducted, and installation of a mitigation system possibly excused, so long as the proponent makes an advance written commitment to install a mitigation system if DENR so requires based on review of a report DENR deems adequate of the investigation activities.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
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LUR 4: Surface water at the Brownfields Property may not be used for any purpose without the prior written approval of DENR

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
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LUR 5: No activities that encounter, expose, remove or use groundwater at a depth of six (6) feet or more (for example, installation of water supply wells, fountains, ponds, lakes or swimming pools, or construction or excavation activities that encounter or expose groundwater) may occur on the Brownfields Property without prior sampling and analysis of groundwater to the written satisfaction of DENR in any areas proposed for

such activities, and submittal of the analytical results to DENR . If such results disclose to DENR contamination in excess of North Carolina's groundwater quality standards, the proposed activities may not occur without the prior written approval of DENR on such conditions as DENR imposes, including at a minimum compliance with plans and procedures, approved pursuant to applicable law, to protect public health and the environment during the proposed activities. Regardless of depth, no activities that encounter, expose, remove or use groundwater may occur on the Brownfields Property absent:

- a. compliance, by all present in connection with the activities, with safety-related protective measures approved in writing by DENR in advance;
- b. management of any excavated soils or groundwater as potential hazardous waste pursuant to applicable law; and
- c. cessation of dewatering activities after no more than 15 days.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 6: Soil at the Brownfields Property may not be disturbed without a minimum of seven (7) business days advance written notice to DENR, unless DENR states otherwise in writing in advance. At the time such soil is disturbed, DENR may inspect and sample, or require sampling of, the exposed soil for contaminants. If soil contamination is discovered that DENR determines would likely contaminate groundwater even if capped, or that may pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law, and any other actions that DENR reasonably requires to make the Brownfields Property suitable for the uses specified above in Land Use Restriction 1 while fully protecting public health and the environment shall be taken. If soil contamination is discovered that DENR determines would not likely contaminate groundwater if capped, or likely pose an imminent threat to public health or the environment if exposed, as much soil as DENR reasonably requires shall be removed and disposed of in accordance with applicable law or capped to the written satisfaction of DENR.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_

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LUR 7: Soil, landscaping and contours at the Brownfields Property may not be disturbed without the prior written approval of DENR, except for mowing and pruning of above-ground vegetation.

In compliance   X   Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 8: No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

In compliance   X   Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 9: No basements may be constructed on the Brownfields Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

In compliance   X   Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 10: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Tables of A and B of the Notice, may be used or stored at the Brownfields Property without the prior written

approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 11: The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 12: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_  
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\_\_\_\_\_

LUR 13: The owner of any portion of the Brownfields Property where any existing or later DENR-approved monitoring well is damaged shall be responsible for repair of any such wells to DENR's written satisfaction and within a time period acceptable to DENR. For purposes of this subparagraph, the wells designated "MW-9" and "MW-10" on the plat component of the Notice are existing DENR-approved monitoring wells.

In compliance   X   Out of compliance       

Remarks: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

LUR 14: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation.

In compliance   X   Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

LUR 15: During January of each year after the year in which the Notice is recorded, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update ("LURU") to DENR certifying that the Notice remains recorded at the Guilford County Register of Deeds office and that the Land Use Restrictions are being complied with, and stating:

- a. the name, mailing address, telephone and facsimile numbers, and contact person's e-mail address of the owner submitting the LURU if said owner acquired any part of the Brownfields Property during the previous calendar year. Insert required information here, if applicable:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. the transferee's name, mailing address, telephone and facsimile numbers, and contact person's e-mail address, if said owner transferred any part of the Brownfields Property during the previous calendar year Insert required information here, if applicable:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- c. whether any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 3 above have been modified in any way; if so, how, and whether the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems

have changed, and, if so, how. Insert required information here, if applicable:

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In compliance X Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
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Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that the Notice remains recorded at the Guilford County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by Hornaday Acquisitions, LLC, owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: HORNADAY ACQUISITIONS, LLC

In the case of owners that are entities:

Signature of individual signing:

Name typed or printed:

Title:

Dale L. Ward  
DALE L. WARD  
MEMBER/MGR.

In the case of all owners:

Date: July 30, 2014



Hornaday Acquisitions, LLC

By: *DALE L. WARD*

Name typed or printed: DALE L. WARD

Member/Manager

NORTH CAROLINA

Guilford COUNTY

I, Adonica P. Rankins, a Notary Public of the county and state aforesaid, certify that DALE L. WARD personally came before me this day and acknowledged that he/she is a Member of Hornaday Acquisitions LLC, a North Carolina (state) limited liability company, and its Manager, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this 1st day of August, 2014.

Adonica P. Rankins

Name typed or printed:

Notary Public

My Commission expires: 6.26.17

